

**REMARKS**

The Examiner's rejections of claims 1-3, 5 and 7 under 35 U.S.C. § 103(a) for being unpatentable over the Boersema US Application No. 2002/0000003 in view of the Ruth U.S. Patent No. 2,424,056, as this rejection may be attempted to be applied against the amended claims 1-3, 5 and 7, is respectfully traversed.

The Boersema published application teaches a generally tubular sock member 11 for infants from about 4 months to about 1 year old, not for adults or young adults. Further Boersema teaches a gripper member 12 or 112 that covers at least a portion of an upper surface, a lower surface and a toe surface of an infant's sock 10 and can include ribs 113 to provide traction for a crawling infant and to reduce the risk of injury to infants crawling on a smooth floor surface. It is not an exercise sock. It is an infant sock. It is only intended to be made in small sizes for young children between the age of 4 months and 1 year.

While the 1945 Ruth patent teaches hose with open toes to " promote freer circulation of the blood and to improve the condition of the skin (of the toes)", Rose does not teach or suggest an exercise sock with toe openings and webbing between the toe openings and a generally continuous sticky material or non-slip material or a non-skid material on the bottom or sole of a sock to facilitate yoga exercises, e.g., tack and grip, while wearing the socks.

Ruth's sock is not made of knit fabric for sweat absorption for the intent of keeping feet warm and absorbing sweat during exercising.

Ruth's *hosiery* is intended to be worn with shoes and keep toes from cramping. Ruth's invention of open toe was intended for hosiery or a sock that would be worn with shoes. Thus Ruth's sock needs to easily slide into a shoe. The purpose of the exposed toes was to eliminate the muscular cramping that sometimes occurs as one's toes get bent as the sock pulls on the toes when the foot goes into a boot or shoe.

Thus, if there was a rubbery substance at the bottom of the sock, the person would not be able to slide their foot into a shoe or boot and this would defeat the purpose of Ruth's invention.

Applicant's sock is intended to be worn without shoes! The exposed toes are in keeping with the barefoot culture associated with yoga, pilates and the like exercise, not for dress wear. Ruth is directed to "nylons" or "hosiery" where applicant is directed to a thicker knit cotton/nylon blend, like a gym sock.

What makes applicant's sock unique is that it combines the open toe between webbings with a non-skid bottom to enable otherwise barefoot exercisers, not infants between about 4 months and about 1 year old, an hygienic environment, and provides sweat absorption, muscle warming, washable, and non-slip features, while enabling the barefoot feel and toe gripping ability needed for the type of exercises carried out by the user.

The Examiner contends that it would be obvious matter of design choice to a person skilled in the art to have provided a rubbery substance of the type disclosed by applicant on a sock designed for use in yoga exercises. This is an unfounded assertion by the Examiner, not based on solid evidence. Applicant respectfully traverses this rejection by the Examiner and points out that only the applicant makes the choice. See *Ex parte Dere*, 118 USPQ 541, and *In re Bezombes, Peyches and Tisser*, 164 USPQ 387 (CCPA 1970) cited in Amendment C.

Boersema is directed to infant socks, not to exercise socks.

Ruth is directed to women's hosiery, not to exercise socks

Applicant submits that there is no motivation in the Ruth toeless hose or in the Boersema infant sock for providing traction to a crawling infant to combine their teachings to somehow come up with applicant's yoga sock as defined now even more clearly in amended claims 1 -3, 5 and 7.

Further, it would not have been an obvious design choice to provide:

(a) a sticky rubbery substance on the bottom, edges and heel of a sock from Boersema

or

(b) the claimed thickness of the rubbery substance being between 0.065 inch and 0.25 inch from Boersma,

plus the webbings from Ruth,

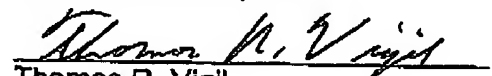
since there is no motivation in Ruth or Boersema to make the design choices resulting in applicant's sock. See the decisions cited above.

Further, one skilled in the art of exercise socks would not look to women's hosiery or to infant socks for direction or motivation to create a Yoga sock.

In summary, applicant submits that the sock as defined in the amended claims is not disclosed or suggested by the references cited by the Examiner, that the amended claims are clear of the art and that the application otherwise is in condition for allowance. An early and favorable action to that end is requested.

Respectfully submitted,

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